

REMARKS

Claims 1-28 are pending in the instant application. Claims 1, 7, 8, 14, 15, 21, 22, and 28 have been editorial amended for better form for examination and allowance. The Office communication mailed May 18, 2004 asserts that the pending claims are directed to four patentably distinct species of the invention Group I – claims 1-7; Group II – claims 8-14; Group III – claims 15-21; and Group IV - claims 22-28. The Restriction Requirement does not list or provide what species the alleged groups are based, e.g., no figures or an alleged species. To expedite the prosecution of this case, applicants have provisionally elected Group I, with **traverse**. Additionally, claims 8-14 read on a species(embodiment shown in FIG. 2A) with respect to claims 1-7.

The Manual of Patent Examining Procedure sets forth two criteria that must be met to make a proper restriction requirement. First, as stated in 35 U.S.C. § 121, the inventions must be independent or distinct. Second, there must be a “serious burden” on the examiner to justify the restriction. M.P.E.P. § 803. The M.P.E.P. further states that a serious burden may be *prima facie* shown “if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search asdefined in MPEP § 802.02.” On the other hand, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. § 803, emphasis added. In this case, the *prima facie* showing of a serious burden has not been met.

Moreover, Applicants respectfully submit that the subject matter of claims 1-7 and claims 8-14 is sufficiently related that a thorough search for the subject matter of claim 1 would

encompass a search for the subject matter of the remaining claims. Far from imposing a serious burden on the Examiner, it would be relatively easy for all of the claims in this application to be examined together. Thus, search and examination the noted of the claims could be made without serious burden. In this circumstance, the M.P.E.P. § 802.02 instructs that the claims should not be restricted. This policy should be applied in the present application to avoid unnecessary delay and expense to the applicants and duplicative examination by the Patent Office.

Applicants reserve the right to file divisional applications directed to non-elected subject matter prior to the termination of proceedings in the present application.

The Examiner is welcome to contact Applicants' undersigned representative to discuss the Restriction Requirement or this Response, or to otherwise further the prosecution in this case.

While no fee is believed due, if any additional fees are required or if an overpayment has been made, the Commissioner is authorized to charge or credit Deposit Account No. 19-0733.

Respectfully submitted,

Dated: June 18, 2004

By: 
Darrell G. Mottley
Registration No. 28,175

BANNER & WITCOFF, LTD.
1001 G. Street, N.W., Eleventh Floor
Washington, D.C. 20001-4597
(202) 824-3000